IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8206 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKOR SOMAJI JENAJI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PJ VYAS for Petitioner(s) : 1,
RMR AY KOGJE AGP for Respondent No.1

.....RULE SERVED upon Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/11/2006

ORAL JUDGMENT

1. Mr.P.J. Vyas, learned counsel for the petitioner, Mr.A.Y. Kogje, learned Assistant Government Pleader for the respondent No.1 – State. None for the respondent No.2

though served.

2. By registered sale deed (not available on record) dtd.14/5/1973, the petitioner purchased 1 Acre and 14 Gunthas land out of Block No.14 admeasuring 5 Acres and 17 Gunthas, 1 Acre and 23.1/2 Gunthas land out of Block No.56 admeasuring 3 Acres and 07 Gunthas and 1 Acre and 20 Gunthas land out of Block No.57 admeasuring 6 acres. Thereafter, Mutation Entry No.378 was made in favour of the petitioner and it was certified with a condition that the petitioner would jointly cultivate the land with the seller. Thereafter, the Prant Officer issued a notice to the petitioner proposing action under sec.8 read with sec.31(B) of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (“the Fragmentation Act” for short). The Prant Officer vide his order dtd.22/10/1994 directed eviction of the petitoiner and imposed fine of Rs.250.00 on the original vendor. The said order was confirmed by the Secretary, Revenue Department (Appeals) in Case No.SRD.CON.Gandhinagar.23/94 on dtd.21-24/8/95, therefore, the petitioner is before this Court.

3. Mr.P.J. Vyas, learned counsel for the petitioner submitted that the action taken by the authorities was bad, firstly

because, there was delay in taking the action. His submission is that the land was purchased in the year 1973, recommendations were made in the year 1983 and the order was passed on 22/10/1994. He submits that during these years, the petitioner has developed the land and as he continues to be in possession, equity lies in his favour. His further submission is that the sale would not cause any fragmentation because the land would be included in the land of the petitioner. His further submission is that if the entry says that the parties would cultivate the land jointly, then there is no partition and there is no fragmentation.

4. On being asked that if permission to purchase a fragment or part of the land of a holder is to be obtained from the Collector, then why such permission was not sought for and whether any post facto sanction can be obtained, Mr.Vyas, learned counsel for the petitioner made a candid statement that post facto sanction can always be obtained. When this court required the learned counsel for the petitioner to refer to the provisions of law, he said that there is no provision of law, but there are Government Circulars to that effect, when this court asked him to cite one of the Circulars, he said that he

even does not have such Circular. Barring recording these factual aspects, I do not wish to record anything further.

5. So far as the question of co-ownership / joint ownership is concerned, learned counsel for the petitioner has relied upon a Single Bench Judgment of this Court delivered on 3/9/1975 in Special Civil Application No.662 of 1971. The facts of the said case were altogether different. In the said matter, the said petitioner before the High Court had purchased the right to cultivate jointly. The observations in the said judgment are “since the sale was effected on the condition not to divide the Block, the Deputy Collector has granted sanction to the same.” From these observation, it would clearly appear that the permission was sought before transfer and there was no sale. In the present case, the petitioner has come out with a specific case that he has purchased the property, he is in exclusive possession and has developed that part of the land which is in his possession. If the petitioner is in exclusive possession of the property then the fact of joint ownership and joint possession could be absolutely ruled out.

6. Even otherwise, under the law, there are no provision that to avoid fragmentation, a joint right to cultivate can

be granted in favour of anybody.

7. So far as the land contiguous to the purchased land is concerned, that would not cut ice in favour of the petitioner, law says that there should be no fragmentation of the land under sale. No new fragment should be created. After the petitioner purchased the land, a fragment has come into being and such a fragment would be contrary to the provisions of law. If there was no sanction and post facto sanction cannot be granted, then the sale itself would be bad, if the sale itself is bad and the action is void, contrary to law and per-se illegal, then the delay would not come in the matter. It is to be noted that the matter was reported to the revenue authorities, on which the Mamlatdar had prepared recommendations, referred the same to the authorities and thereafter, action was taken.

8. Mr.Vyas, learned counsel for the petitioner has also placed his strong reliance upon a Division Bench Judgment of this Court in case of Patel Ratilal Maganbhai and others Vs. State of Gujarat, reported in 2003(1) G.L.R. 562. In the said matter, certain proceedings under the Fragmentation Act were initiated by the competent authority, the same culminated in favour the transferee

and the order was ultimately approved by the Government. The transferor came to the High Court under Article 226 of the Constitution of India and then the High Court observed that the seller of such transaction of voluntary sale, has to file, within the period of limitation, a suit for declaration that the sale is void. The Court also observed that a plea of illegal / void transfer would be available to the petitioner, the plaintiff of said matter. The facts of the said case were altogether different and same do not say anything about the action taken by an authority. In the present case, the authorities were absolutely justified in holding that the sale was contrary to the provisions of the Fragmentation Act. The petition is dismissed. Interim relief, if any, is vacated forthwith. No costs.

(R.S. GARG,J.)

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